IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.986 of 2007

R.Usha .. Petitioner

Vs

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus praying to call for records relating to the detention order passed by the second respondent dated 26.5.2007 in Memo No.217/BDFGISSV/2007 against the petitioner's Son, detenue Kannan @ Appu S/o Rajendran, aged about 23 years, who is now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce him before this Hon'ble court and set him at liberty.

For Petitioner : Mr.V.Perarasu

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, mother of the detenu, by name Kannan @ Appu, challenges the order of detention dated 26.5.2007 made in Memo No.217/BDFGISSV/2007 passed by the second respondent branding the said Kannan @ Appu as Goonda under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,

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Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The ground case which led the detaining authority to pass the order of detention dated 26.5.2007 is that on 30.04.2007, when the Sub Inspector of Police, T3 Korattur Police Station, along with police party was on a hunt for absconding accused, they stumbled upon the detenu at MTH Road, Padi. On seeing the police party, the detenu tried to flee the spot. However, the police party surrounded and tried to apprehend him. In the melee, one police officer sustained cut injuries. The detenu then went on a violent spree and threw soda bottles, which scattered on the road and thus created panic in the minds of the public. However, the detenu was apprehended by the police with the help of public. On the basis of the above incident, case was registered in Cr.No.375/2007 under Sections 341, 332, 336, 427, 307 and 506(2) IPC.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the

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detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 26.5.2007, a representation was made on behalf of the detenu on 21.6.2007, which was received by the Government on 25.6.2007. Remarks were called for from the detaining authority on 26.6.2007, which was received by the detaining authority on 27.6.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 28.6.2007 and on receipt of the same on 2.7.2007, the detaining authority sent it to the Government on 3.7.2007 and the same was received on 4.7.2007. Thereafter, the file was submitted on 5.7.2007 and on the same day, it was considered by the Section Officer, Under Secretary and Additional Secretary. The file was considered by the Minister on 6.7.2007. However, the rejection letter was prepared on 16.7.2007, after a delay of eleven days, which is not properly explained. Even taking note of the intervening holidays, viz., 7.7.2007, 8.7.2007, 14.7.2007 and 15.7.2007 (being Saturdays and Sundays), the delay of seven days

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in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 17.7.2007 and served on the detenu on 18.7.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of seven days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police,
   Chennai.

3. The Superintendent of Central Prison
   Puzhal, Chennai.

4. The Joint Secretary
   to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor
   High Court, Madras.

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SR/16.10.2007

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